IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1830 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MODI BACHUBHAI SAKALCHAND

Versus

MARIYAMBIBI NOORMOHMAD

Appearance:

PARTY-IN-PERSON for Petitioner

MR KV SHELAT for Respondent No. 1

NOTICE SERVED for Respondent No. 12,13,14

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 13/02/2001

CAV JUDGEMENT

1. The present Civil Revision Application has been

filed by the applicant abovenamed under Section 29 of the Bombay Rents, Hotels and Lodging Houses (Rates) Control Act,1947 (hereinafter, referred as Act for short) against the judgement and decree dated 19th August, 1996 recorded by the learned Appellate Bench of the Small Causes Court, Ahmedabad in Civil Appeal No.33/85 dismissing the said appeal of the present applicant substantially and confirming the judgement and decree dated 27th March, 1996 recorded by the learned Judge of the Small Causes Court at Ahmedabad in H.R.P. Suit No. 4150/1978 under which, the learned Judge dismissed the said suit of the present applicant - original plaintiff before the Trial Court for possession of the rented property which is a shop situated in the City of Ahmedabad on Astodia Road, Nr. Bada Pole, Ahmedabad, which is more particularly discribed in para 1 of the plaint.

2. The applicant above named instituted the above suit before the Small Causes Court, where, it was contended by the applicant that the said shop was let to one Noor Mohd. Gulamnabi. That he died and thereafter, none from his family was using the said shop. That even the members of the family of the deceased were not carrying on business with the deceased at the time of his death and therefore, under the provisions contained in Section 5 (11)(c)(ii) of the Act, the present opponents were not entitled to claim tenancy right in respect of the said shop and therefore, they should be treated to be tress passer and not tenants in respect thereof. The applicant further contended that the suit shop was required by him reasonably and bonafidely for his personal occupation. The applicant further contended that the opponents had unlawfully transferred or sublet or assigned their interest in the suit shop and therefore, the applicant was entitled to a decree for possession of the said shop.

3. The suit was resisted and apart from other things, the opponents claimed tenancy rights in place of deceased tenant of the said shop.

4. After framing the issues, recording the evidence and hearing the parties, the learned trial Judge dismissed the suit of the applicant for possession of the tenanted shop and held some of the opponents to be the tenants of the said shop. Feeling aggrieved by the judgement and decree of the trial Court, the applicant preferred Civil Appeal No. 33/85 before the Appellate Bench of the Small Causes Court at Ahmedabad under Section 28 of the Act. Same contentions were raised therein. The Appellate Bench held that the learned trial

Judge had not committed error of law or in facts in deciding the aforesaid issues against the applicant. The Appellate Bench dismissed the appeal of the applicant and confirmed the judgement of the learned Trial Judge with slight modification that the opponents nos. 1, 2,3,4, 6,7 and 8 were the tenants in respect of the suit shop. The Appellate Bench also held that the learned trial Judge has declared defendants nos. 2,3,4 and 7 as tenants in the suit premises. With aforesaid modification, the appeal came to be dismissed by the Appellate Bench of the said Court.

5. Feeling aggrieved by the said judgement and decree of the Appellate Bench of the Small Causes Court at Ahmedabad, the applicant had preferred this Revision Application under Section 29 (2) of the Act. It has been mainly contended that two Courts below have committed illegality in holding that some of the opponents were the tenants in respect of the suit shop. It is further contended that two Courts below have committed serious error of law and of facts in not properly considering the fact that the suit shop was a business premises and not a residential premises. It is further contended that the Courts below have committed serious error in appreciating the facts and in relying upon the documentary evidence produced by the opponent in support of the claim that they were carrying on business in the suit shop alongwith deceased at the time of his death. That the two courts below have committed error in deciding the issue of personal requirement and subletting against the applicant. That on the whole, the judgements and decrees of the two Courts below are illegal and erroneous and deserve to be set aside. The applicant has therefore prayed that the present Civil Revision Application be allowed and the judgements and decrees of the two Courts below be set aside and to declare that the opponents are not the tenants of the suit shop and that the decree be granted in favour of the applicant and against the opponents directing the opponents to hand over the vacant possession of the suit shop to the applicant.

6. The revision was admitted and notices were issued. Mr K.V. Shelat, appears on behalf of the opponents. The applicant himself has argued the matter at length before the Court.

7. At the initial stage, a question arose, as to whether the applicant would be entitled to claim decree on the ground mentioned in Section 13 of the Act, when the applicant does not consider the opponents to be the tenants of the suit shop. At this juncture, the

applicant himself appearing in the matter in person fairly conceded that he did not press the Revision Application for possession of the rented property on the ground mentioned in Section 13 of the Act. In other words, he did not press this Revision on the ground of personal requirement and subletting. Therefore, it is not necessary to go into the said two issues.

8. The main issue before the Court is as to whether the two courts below have committed illegality in holding that the some of the opponents were tenants in respect of the suit shop.

9. The applicant has argued that the suit shop is a business premises and therefore, nobody would reside in it, as well as there was no question as to whether or not opponents were residing with the deceased tenant in the residential house at the time of death of the deceased.

10. Mr. K.V.Shelat, learned advocate appearing for opponents has also contended that this is a business premise and therefore, the residence of the legal representatives of the deceased with the deceased in same residential house is not a relevant consideration. He also states that for claiming tenancy right in respect of the suit shop, the opponents were required to show before two Courts below that they were carrying on business with the deceased in the suit shop at the time of death of the deceased.

11. Therefore, we have to consider the aforesaid aspect of the case.

12. The opponents have led evidence to show that they were carrying on business in the suit shop at the time of death of the deceased. Further oral evidence is supported by some documentary evidence. The applicant has denied the said arguments and has said that they were not doing the business in the suit shop at the time of the death of the deceased.

13. The applicant, in person, has argued at length that the two Courts below have committed serious illegality in relying upon the order book produced by the opponents in order to show that they were carrying on business in the suit shop at the time of death of the deceased. The applicant has contended, during the course of his argument, that the order book was placed on the record of the Courts. That thereafter, the opponents had taken it away with permission of the Court. That the opponents have made certain additional entries in the

said order book and thereafter, produced the said order book on the record of the Court.

14. Now, there is nothing on the record to show that the entries were made in the said order book by the opponents subsequently. Then, there is nothing on the record that the entries are got up or fabricated. Two Courts below have not recorded such a finding . On the contrary, the two courts below thought it proper to rely and depend on the oral testimony of the opponents in order to record the finding of fact that the opponents were carrying on business in the suit shop alongwith the deceased at and before the date of death of the deceased.

15. The applicant has relied upon a decision of this Court in case of PARUBAI MANILAL BRAHMIN AND OTHERS VS.BALDEVDAS ZAVERBHAI TAPODHAN, POWER OF ATTORNEY HOLDER OF MEHTA HARILAL KALIDAS, reported in 1964. GLH, 563, There, this court has observed as under : -

> " that on the death of a statutory tenant in respect of business premises, the statutory tenancy would come to an end and neither the heirs nor the members of the family of the statutory tenant would be entitled to resist the landlord's claim for recovery of possession of the premises. "

16. Even the opponents have not disputed this aspect of case or this proportion of law.

17. Here the question is that the opponents have claimed that they were carrying on business in the suit shop, with the deceased at and before the date of death of the deceased. Therefore, the material question before the two Court below was as to whether or not the opponents or some of them were carrying on business in the suit shop with the deceased at the time of his death. After appreciating the evidence, the two Courts below have found that the opponents were carrying on business in the suit shop with the deceased at and before the date of death of the deceased.

18. Therefore, the two Courts below have recorded concurrent finding of fact on appreciation of evidence both oral and documentary.

19. The main and substantial argument of the applicant, in person is that the two courts below have committed error in appreciation of facts meaning thereby, that this Court should again undertake an exercise of

reappreciation of evidence in this Revision application. I am of the opinion that there is fundamental difference between an Appeal and Revision. In Appeal, reappreciation of evidence is permissible. In Revision, it is not permissible. Therefore, if we strictly go into the provisions made in Section 115 of the Civil Procedure Code, 1908 and Section 29(2) of the Act, it would lead us to hold that reappreciation of evidence in Revision application is not permissible.

20. Again the applicant has argued, in person, that the two Courts below have relied upon an order book, which ought not to have been relied upon by them. Now, the two Courts below have recorded finding of fact that the opponents herein had proved the said order book. The order book may not be technically speaking the books of accounts and therefore, it may not have been report prepared and maintained in regular course of business. After all it relates to a small shop. The deceased tenant was a tailor and some of the opponents were also working there as tailors. Therefore, entries may be posted therein as and when the customers may go there for getting thier cloths stitched and atthetime when the delivery is effected. Technically speaking, this may not be a matter of books of accounts kept in regular course of business.

21. However, whatever, notes made by them in course of business were produced by them before the Court and the two courts below have accepted the same as genuine. In that view of the matter, when this document was relied upon by the two courts below on appreciation thereof, this Court cannot undertake exercise of appreciation of the evidence again.

22. Same way, the two Courts below have appreciated the oral evidence of the parties and have recorded the finding of fact that some of the opponents were carrying on business in the suit shop with the deceased tenant at and before the death of the deceased tenant and hence, were the tenants in respect of the property in question. This Court cannot undertake exercise of reappreciation of oral evidence also. Once it is believed and accepted that reappreciation of oral and documentary evidence is impermissible, then there is no point to be considered arising from the arguments of the applicant.

23. On this aspect of the case, we can refer to a recent decision of the Hon'ble Supreme Court in case of PATEL VAKMIK HIMATLAL & ORS. VS. PATEL MOHANLAL MULJIBHAI (DEAD) THROUGH LRs., reported in 1999 (1) GLR

15. There, the Hon'ble the Apex Court has considered the provisions made in Section 29 (2) of the Act and has also examined the scope of powers of the Court exercising the jurisdiction under that provision. The Hon'ble Apex Court after going through the said provisions has observed as under :-

" that the powers under Section 29(2) are revisional powers with which the High Court is clothed. It empowers the High Court to correct errors which may make the decision contrary to law and which errors go to the root of the decision but it does not vest the High Court with the power to rehear the matter and re-appreciate the evidence. The mere fact that a different view is possible on re-appreciation of evidence cannot be a ground for exercise of the revisional jurisdiction."

24. Thus, it is clear that the reappreciation of evidence is impermissible. Now, once we find that the reappreciation is not permissible then there is no law point involved in the matter for holding that the opponents or any of them are not the tenants and they were not carrying on business in the suit shop with the deceased at and before the date of his death. The entire consideration is based on facts, which is again based on oral and documentary evidence.

25. Under the aforesaid facts and circumstances of the case, I am of the opinion that once it is found that the reappreciation of evidence oral and documentary is impermissible, there is no law point involved in the matter, which would lead us to hold that the opponents are not the tenants of the suit shop and they were not carrying on business in the suit shop at the time of death of the deceased.

26. In that view of the matter, the findings of fact are required to be accepted and once the findings of fact are accepted, then, there is no alternative but to dismiss the Civil Revision Application of the applicant.

27. In the aforesaid aspect of the case and in the facts and circumstances of the case, I am of the view that there is no law point involved, which could be considered in this Revision Application and consequently, the Revision Application is without any merits and hence it deserves to be dismissed.

28. This Revision Application is accordingly

dismissed. The judgements and decrees of the two Courts below are hereby confirmed. However, in the facts and circumstances of the case, there shall be no order as to costs.

(D. P. Buch, J.)

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